

AMENDED IN ASSEMBLY MAY 1, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2557

Introduced by Assembly Member Feuer

February 24, 2012

An act to amend Section 2929.3 of the Civil Code, and to amend Section 17980.7 of the Health and Safety Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 2557, as amended, Feuer. Real property: maintenance and abatement.

Existing law, until January 1, 2013, requires a legal owner to maintain vacant residential property purchased or acquired through foreclosure. Existing law also authorizes a governmental entity to impose civil fines for failure to maintain that property of up to \$1,000 per day for a violation, after notice and an opportunity to correct the violation is given.

This bill would authorize a person whose property is injuriously affected or whose enjoyment is lessened by a property owner's violation of those property maintenance provisions to bring an action for injunctive relief. *The bill would require a person who seeks an injunction to provide the legal owner by mail a written description of the conditions that gave rise to the violation, and identify the person's intent to seek an injunction if action to correct the violation is not commenced and completed within a specified period of time.* The bill would authorize an action to be brought either in a small claims court or superior court within the county in which the property is situated. The bill would also

authorize a prevailing plaintiff to recover court costs and reasonable attorney's fees if the action is brought in superior court.

Existing law provides for abatement of substandard conditions in buildings and authorizes an enforcement agency to issue an order or notice to repair or abate violations of specified building standards. Under existing law, if the owner of a property with substandard conditions fails to comply within a reasonable time period with the terms of the order or notice, the enforcement agency, tenant, or tenant association or organization may seek, and the court may order, the appointment of a receiver for the substandard building.

This bill would also authorize any district attorney, county counsel, or city attorney with jurisdiction over the substandard building, acting in the name of the people, to seek a court order for the appointment of a receiver for the substandard building.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2929.3 of the Civil Code is amended to
2 read:

3 2929.3. (a) (1) A legal owner shall maintain vacant residential
4 property purchased by that owner at a foreclosure sale, or acquired
5 by that owner through foreclosure under a mortgage or deed of
6 trust. A governmental entity may impose a civil fine of up to one
7 thousand dollars (\$1,000) per day for a violation. If the
8 governmental entity chooses to impose a fine pursuant to this
9 section, it shall give notice of the alleged violation, including a
10 description of the conditions that gave rise to the allegation, and
11 notice of the entity's intent to assess a civil fine if action to correct
12 the violation is not commenced within a period of not less than 14
13 days and completed within a period of not less than 30 days. The
14 notice shall be mailed to the address provided in the deed or other
15 instrument as specified in subdivision (a) of Section 27321.5 of
16 the Government Code, or, if none, to the return address provided
17 on the deed or other instrument.

18 (2) The governmental entity shall provide a period of not less
19 than 30 days for the legal owner to remedy the violation prior to
20 imposing a civil fine and shall allow for a hearing and opportunity
21 to contest any fine imposed. In determining the amount of the fine,

1 the governmental entity shall take into consideration any timely
2 and good faith efforts by the legal owner to remedy the violation.
3 The maximum civil fine authorized by this section is one thousand
4 dollars (\$1,000) for each day that the owner fails to maintain the
5 property, commencing on the day following the expiration of the
6 period to remedy the violation established by the governmental
7 entity.

8 (3) Subject to the provisions of this section, a governmental
9 entity may establish different compliance periods for different
10 conditions on the same property in the notice of alleged violation
11 mailed to the legal owner.

12 (b) A legal owner who fails to maintain a vacant residential
13 property in violation of paragraph (1) of subdivision (a) shall be
14 subject to an action for injunctive relief brought by any person
15 whose property is injuriously affected, or whose personal
16 enjoyment is lessened, by the property owner's violation. *A person*
17 *who seeks an injunction pursuant to this subdivision shall provide*
18 *the legal owner a written description of the conditions that gave*
19 *rise to the violation and identify the person's intent to seek an*
20 *injunction if action to correct the violation is not commenced within*
21 *a period of not less than 14 days, and completed within a period*
22 *of not less than 30 days, which shall be mailed to the address*
23 *provided in the deed or other instrument as specified in subdivision*
24 *(a) of Section 27321.5 of the Government Code, or, if none, to the*
25 *return address provided on the deed or other instrument.* An action
26 brought pursuant to this subdivision may be brought either in a
27 small claims court or the superior court of the county in which the
28 property is situated. If the action is brought in superior court, a
29 prevailing plaintiff may recover court costs and reasonable
30 attorney's fees.

31 (c) For purposes of this section, "failure to maintain" means
32 failure to care for the exterior of the property, including, but not
33 limited to, permitting excessive foliage growth that diminishes the
34 value of surrounding properties, failing to take action to prevent
35 trespassers or squatters from remaining on the property, or failing
36 to take action to prevent mosquito larvae from growing in standing
37 water or other conditions that create a public nuisance.

38 (d) Notwithstanding subdivisions (a) and (c), a governmental
39 entity may provide less than 30 days' notice to remedy a condition
40 before imposing a civil fine if the entity determines that a specific

1 condition of the property threatens public health or safety and
2 provided that notice of that determination and time for compliance
3 is given.

4 (e) Fines and penalties collected pursuant to this section shall
5 be directed to local nuisance abatement programs.

6 (f) A governmental entity may not impose fines on a legal owner
7 under both this section and a local ordinance.

8 (g) These provisions shall not preempt any local ordinance.

9 (h) This section shall only apply to residential real property.

10 (i) The rights and remedies provided in this section are
11 cumulative and in addition to any other rights and remedies
12 provided by law.

13 (j) This section shall remain in effect only until January 1, 2013,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before January 1, 2013, deletes or extends that date.

16 SEC. 2. Section 17980.7 of the Health and Safety Code is
17 amended to read:

18 17980.7. If the owner fails to comply within a reasonable time
19 with the terms of the order or notice issued pursuant to Section
20 17980.6, the following provisions shall apply:

21 (a) The enforcement agency may seek and the court may order
22 imposition of the penalties provided for under Chapter 6
23 (commencing with Section 17995).

24 (b) (1) The enforcement agency may seek and the court may
25 order the owner to not claim any deduction with respect to state
26 taxes for interest, taxes, expenses, depreciation, or amortization
27 paid or incurred with respect to the cited structure, in the taxable
28 year of the initial order or notice, in lieu of the enforcement agency
29 processing a violation in accordance with Sections 17274 and
30 24436.5 of the Revenue and Taxation Code.

31 (2) If the owner fails to comply with the terms of the order or
32 notice to correct the condition that caused the violation pursuant
33 to Section 17980.6, the court may order the owner to not claim
34 these tax benefits for the following year.

35 (c) The enforcement agency, tenant, tenant association or
36 organization, or any district attorney, county counsel, or city
37 attorney with jurisdiction over the substandard building, acting in
38 the name of the people, may seek and the court may order, the
39 appointment of a receiver for the substandard building pursuant
40 to this subdivision. In its petition to the court, the enforcement

1 agency, tenant, tenant association or organization, or any district
2 attorney, county counsel, or city attorney with jurisdiction over
3 the substandard building shall include proof that notice of the
4 petition was served not less than three days prior to filing the
5 petition, pursuant to Article 3 (commencing with Section 415.10)
6 of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure,
7 to all persons with a recorded interest in the real property upon
8 which the substandard building exists.

9 (1) In appointing a receiver, the court shall consider whether
10 the owner has been afforded a reasonable opportunity to correct
11 the conditions cited in the notice of violation.

12 (2) The court shall not appoint any person as a receiver unless
13 the person has demonstrated to the court his or her capacity and
14 expertise to develop and supervise a viable financial and
15 construction plan for the satisfactory rehabilitation of the building.
16 A court may appoint as a receiver a nonprofit organization or
17 community development corporation. In addition to the duties and
18 powers that may be granted pursuant to this section, the nonprofit
19 organization or community development corporation may also
20 apply for grants to assist in the rehabilitation of the building.

21 (3) If a receiver is appointed, the owner and his or her agent of
22 the substandard building shall be enjoined from collecting rents
23 from the tenants, interfering with the receiver in the operation of
24 the substandard building, and encumbering or transferring the
25 substandard building or real property upon which the building is
26 situated.

27 (4) Any receiver appointed pursuant to this section shall have
28 all of the following powers and duties in the order of priority listed
29 in this paragraph, unless the court otherwise permits:

30 (A) To take full and complete control of the substandard
31 property.

32 (B) To manage the substandard building and pay expenses of
33 the operation of the substandard building and real property upon
34 which the building is located, including taxes, insurance, utilities,
35 general maintenance, and debt secured by an interest in the real
36 property.

37 (C) To secure a cost estimate and construction plan from a
38 licensed contractor for the repairs necessary to correct the
39 conditions cited in the notice of violation.

1 (D) To enter into contracts and employ a licensed contractor as
2 necessary to correct the conditions cited in the notice of violation.

3 (E) To collect all rents and income from the substandard
4 building.

5 (F) To use all rents and income from the substandard building
6 to pay for the cost of rehabilitation and repairs determined by the
7 court as necessary to correct the conditions cited in the notice of
8 violation.

9 (G) To borrow funds to pay for repairs necessary to correct the
10 conditions cited in the notice of violation and to borrow funds to
11 pay for any relocation benefits authorized by paragraph (6) and,
12 with court approval, secure that debt and any moneys owed to the
13 receiver for services performed pursuant to this section with a lien
14 on the real property upon which the substandard building is located.
15 The lien shall be recorded in the county recorder's office in the
16 county within which the building is located.

17 (H) To exercise the powers granted to receivers under Section
18 568 of the Code of Civil Procedure.

19 (5) The receiver shall be entitled to the same fees, commissions,
20 and necessary expenses as receivers in actions to foreclose
21 mortgages.

22 (6) If the conditions of the premises or the repair or rehabilitation
23 thereof significantly affect the safe and sanitary use of the
24 substandard building by any tenant, to the extent that the tenant
25 cannot safely reside in his or her unit, then the receiver shall
26 provide relocation benefits in accordance with subparagraph (A)
27 of paragraph (3) of subdivision (d).

28 (7) The relocation compensation provided for in this section
29 shall not preempt any local ordinance that provides for greater
30 relocation assistance.

31 (8) In addition to any reporting required by the court, the
32 receiver shall prepare monthly reports to the state or local
33 enforcement agency which shall contain information on at least
34 the following items:

35 (A) The total amount of rent payments received.

36 (B) Nature and amount of contracts negotiated relative to the
37 operation or repair of the property.

38 (C) Payments made toward the repair of the premises.

39 (D) Progress of necessary repairs.

1 (E) Other payments made relative to the operation of the
2 building.

3 (F) Amount of tenant relocation benefits paid.

4 (9) The receiver shall be discharged when the conditions cited
5 in the notice of violation have been remedied in accordance with
6 the court order or judgment and a complete accounting of all costs
7 and repairs has been delivered to the court. Upon removal of the
8 condition, the owner, the mortgagee, or any lienor of record may
9 apply for the discharge of all moneys not used by the receiver for
10 removal of the condition and all other costs authorized by this
11 section.

12 (10) After discharging the receiver, the court may retain
13 jurisdiction for a time period not to exceed 18 consecutive months,
14 and require the owner and the enforcement agency responsible for
15 enforcing Section 17980 to report to the court in accordance with
16 a schedule determined by the court.

17 (11) The prevailing party in an action pursuant to this section
18 shall be entitled to reasonable attorney's fees and court costs as
19 may be fixed by the court.

20 (12) The county recorder may charge and collect fees for the
21 recording of all notices and other documents required by this
22 section pursuant to Article 5 (commencing with Section 27360)
23 of Chapter 6 of Division 2 of Title 3 of the Government Code.

24 (13) Nothing in this section shall be construed to limit those
25 rights available to tenants and owners under any other provision
26 of the law.

27 (14) Nothing in this section shall be construed to deprive an
28 owner of a substandard building of all procedural due process
29 rights guaranteed by the California Constitution and the United
30 States Constitution, including, but not limited to, receipt of notice
31 of the violation claimed and an adequate and reasonable period of
32 time to comply with any orders which are issued by the
33 enforcement agency or the court.

34 (d) If the court finds that a building is in a condition which
35 substantially endangers the health and safety of residents pursuant
36 to Section 17980.6, upon the entry of any order or judgment, the
37 court shall do all of the following:

38 (1) Order the owner to pay all reasonable and actual costs of
39 the enforcement agency including, but not limited to, inspection

1 costs, investigation costs, enforcement costs, attorney fees or costs,
2 and all costs of prosecution.

3 (2) Order that the local enforcement agency shall provide the
4 tenant with notice of the court order or judgment.

5 (3) (A) Order that if the owner undertakes repairs or
6 rehabilitation as a result of being cited for a notice under this
7 chapter, and if the conditions of the premises or the repair or
8 rehabilitation thereof significantly affect the safe and sanitary use
9 of the premises by any lawful tenant, so that the tenant cannot
10 safely reside in the premises, then the owner shall provide or pay
11 relocation benefits to each lawful tenant. These benefits shall
12 consist of actual reasonable moving and storage costs and
13 relocation compensation. The actual moving and storage costs
14 shall consist of all of the following:

15 (i) Transportation of the tenant's personal property to the new
16 location. The new location shall be in close proximity to the
17 substandard premises, except where relocation to a new location
18 beyond a close proximity is determined by the court to be justified.

19 (ii) Packing, crating, unpacking, and uncrating the tenant's
20 personal property.

21 (iii) Insurance of the tenant's property while in transit.

22 (iv) The reasonable replacement value of property lost, stolen,
23 or damaged (not through the fault or negligence of the displaced
24 person, his or her agent or employee) in the process of moving,
25 where insurance covering the loss, theft, or damage is not
26 reasonably available.

27 (v) The cost of disconnecting, dismantling, removing,
28 reassembling, reconnecting, and reinstalling machinery, equipment,
29 or other personal property of the tenant, including connection
30 charges imposed by utility companies for starting utility service.

31 (B) (i) The relocation compensation shall be an amount equal
32 to the differential between the contract rent and the fair market
33 rental value determined by the federal Department of Housing and
34 Urban Development for a unit of comparable size within the area
35 for the period that the unit is being repaired, not to exceed 120
36 days.

37 (ii) If the court finds that a tenant has been substantially
38 responsible for causing or substantially contributing to the
39 substandard conditions, then the relocation benefits of this section
40 shall not be paid to this tenant. Each other tenant on the premises

1 who has been ordered to relocate due to the substandard conditions
2 and who is not substantially responsible for causing or contributing
3 to the conditions shall be paid these benefits and moving costs at
4 the time that he or she actually relocates.

5 (4) Determine the date when the tenant is to relocate, and order
6 the tenant to notify the enforcement agency and the owner of the
7 address of the premises to which he or she has relocated within
8 five days after the relocation.

9 (5) (A) Order that the owner shall offer the first right to
10 occupancy of the premises to each tenant who received benefits
11 pursuant to subparagraph (A) of paragraph (3), before letting the
12 unit for rent to a third party. The owner's offer on the first right
13 to occupancy to the tenant shall be in writing, and sent by first-class
14 certified mail to the address given by the tenant at the time of
15 relocation. If the owner has not been provided the tenant's address
16 by the tenant as prescribed by this section, the owner shall not be
17 required to provide notice under this section or offer the tenant the
18 right to return to occupancy.

19 (B) The tenant shall notify the owner in writing that he or she
20 will occupy the unit. The notice shall be sent by first-class certified
21 mail no later than 10 days after the notice has been mailed by the
22 owner.

23 (6) Order that failure to comply with any abatement order under
24 this chapter shall be punishable by civil contempt, penalties under
25 Chapter 6 (commencing with Section 17995), and any other
26 penalties and fines as are available.

27 (e) The initiation of a proceeding or entry of a judgment pursuant
28 to this section or Section 17980.6 shall be deemed to be a
29 "proceeding" or "judgment" as provided by paragraph (4) or (5)
30 of subdivision (a) of Section 1942.5 of the Civil Code.

31 (f) The term "owner," for the purposes of this section, shall
32 include the owner, including any public entity that owns residential
33 real property, at the time of the initial notice or order and any
34 successor in interest who had actual or constructive knowledge of
35 the notice, order, or prosecution.

36 (g) These remedies shall be in addition to those provided by
37 any other law.

38 (h) Nothing in this section or in Section 17980.6 shall impair
39 the rights of an owner exercising his or her rights established

- 1 pursuant to Chapter 12.75 (commencing with Section 7060) of
- 2 Division 7 of Title 1 of the Government Code.

O